

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-185816

DATE: June 21, 1976

MATTER OF: Canadian Commercial Corporation

DIGEST:

1. Telegraphic bid which contrary to solicitation requirement contains only prices and no mention of bidder's agreement to be bound by all terms and conditions of solicitation is nonresponsive.
2. Registered letter, allegedly containing bid documents, received day after bid opening is late and not for consideration, since not mailed not later than fifth calendar day prior to date specified for bid receipt and since delay not due to Government mishandling.

Invitation for bids No. DSA700-76-B-0858 was issued by the Defense Supply Agency, Defense Construction Supply Center (DCSC), Columbus, Ohio, with bid opening set for January 20, 1976. The Canadian Commercial Corporation (CCC) and Laurentian Concentrates, Ltd. (Laurentian), a Canadian concern, protest the rejection of the latter's telegraphic bid and of the later submitted bid documents on item Nos. 0002 and 0003. The prices Laurentian submitted on these items were the lowest received.

The Laurentian telegraphic bid read as follows:

"RE SOLICITATION DSA 700-76-B-0858 FOAM LIQUID FIRE  
EXTINGUISHING - OPENING 10:30 A.M. JAN 20/76.

"DUE UNCERTAINTY MAELS WE HEREWITH CONFIRM PRICES  
BID VIA CDN COMMERCIAL CORP:

CLIN ITEM 0002 BID B	16.25 CN
CLIN ITEM 0003 BID B	14.50 CN"

This bid was received on January 19. On January 21 the contracting activity received a registered letter, mailed and registered on January 16, from CCC. According to CCC, the letter contained the representations required by paragraphs 6-504.1(b)(1) and 6-103.5(c)(2) of the Armed Services Procurement Regulation (ASPR) (1975 ed.) and

the actual bid documents executed by Laurentian. The letter was considered to have been submitted late and was not opened.

The contracting activity rejected the Laurentian telegraphic bid because it did not comply with the provisions of ASPR § 6-504.1(b)(2) (1975 ed.) and because it did not comply with subparagraph C01a, "PREPARATION OF TELEGRAPHIC BIDS (OFFERS)," of the DCSC Master Solicitation. ASPR § 6-504.1(b)(2) provides:

"(2) When a Canadian bid or proposal cannot be processed through the Canadian Commercial Corporation in time to meet the bid opening requirement, the Corporation is authorized to permit Canadian firms to submit bids or proposals directly, provided the Canadian bid or proposal and the Canadian Commercial Corporation endorsement are both received by the purchasing office prior to bid opening."

Subparagraph C01a requires the bidder to insert in its telegraphic bid a statement of its agreement to be bound by all the terms, conditions, and provisions of the invitation. The CCC was notified that because the submission of the Laurentian bid documents was not received until January 21, having been mailed January 16, and there was no basis for determining that the late receipt was due to mishandling by the Government after receipt by it, the CCC submission was late and not for acceptance under paragraph C39 of the DCSC Master Solicitation, "LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1974 SEP)--ASPR 7-2002.2."

It is the position of the CCC that Laurentian should receive award since that firm is well known to the DCSC as a capable and responsible supplier on previous DCSC contracts and since its telegraphic bid was submitted prior to bid opening. It is further contended that the requirements of ASPR § 6-504.1(b)(2) are nothing more than administrative arrangements to ensure that awards are made only to responsible Canadian firms and that these may, consequently, be waived since the DCSC knew Laurentian to be responsible. Lastly, it is contended that the act of registering with the Canadian Post Office the CCC letter containing the Laurentian bid documents constituted the necessary formal confirmation of the Laurentian telegraphic bid.

We believe that the contracting activity was correct in its determinations. Paragraph C01 of the DCSC Master Solicitation, "TELEGRAPHIC BIDS," stated that the bid should indicate that the bidder was bidding "Subject to all the terms, conditions, and

provisions \* \* \*" of the solicitation and any amendment thereto. As there was no mention in the Laurentian telegraphic bid to the extent that it was submitted on that basis, or for that matter no mention was made of the delivery date agreed to (as was also required in paragraph C01), that bid was nonresponsive. B-158871, July 11, 1966. Consequently, the only manner in which the Laurentian bid could be accepted would be if it were possible to permit the Laurentian bid documents submitted by CCC to cure the defect in the telegraphic bid. This, we believe, is not permissible.

ASPR § 7-2002.2 provides in part as follows:

"LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1974 SEP)

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:


"(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

"(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation."

The CCC letter was registered on January 16. As bid opening was January 20 the letter was not registered "not later than the fifth calendar day prior to the date specified for the receipt of bids." Nor has it been shown that the January 21 receipt "was due solely to mishandling by the Government after receipt at the Government installation." Accordingly, the CCC letter was not a late bid that could be considered, and thus it may not be used to cure the nonresponsiveness of the Laurentian telegraphic bid. See B-158871, supra.

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In view of the above, the protest is denied.

  
Deputy Comptroller General  
of the United States